



# STATE ETHICS COMMISSION BULLETIN

Volume XXIII Issue 1

Spring 2001

## It's Time to File your Statement of Financial Interests

Last year, 5,121 elected officials, public employees and candidates for public office filed their Statements of Financial Interests or SFIs with the Ethics Commission. With only a few exceptions, every individual required to file did so by the relevant dates. The public is well-served by the timely filing of SFIs and the Commission is grateful for the cooperation of filers and their agencies.

Under the financial disclosure law, G.L. c. 268B, state and county employees designated to be in major policy making positions are required to file their 2000 SFIs by 5:00 p.m. on Tuesday, **May 1, 2001**. State and county elected officials and candidates for those positions are required to file by 5:00 p.m. on Tuesday, **May 29, 2001**.

The Commission is working hard to simplify the filing process. Last year, the SFI Form was available online in a PDF format that could be downloaded from the Commission's Web site located at [www.state.ma.us/ethics](http://www.state.ma.us/ethics). This year, the SFI Form will also be available in a

PDF updateable format that will allow you to download and complete the SFI Form on your computer. Once completed, the form may be printed, signed and submitted to the Commission.

Also new this year, individuals who filed amendments to their statements during the past year will receive copies of those amended 1999 filings to better help them complete this year's SFIs.

As in past years, Commission staff is always available to answer questions and provide help to filers.

The Commission's Statements of Financial Interests Division has collected and reviewed approximately 95,000 SFI documents since the creation of the financial disclosure law in 1979.

Statements are available upon the written request of any individual for public inspection and copying at the Commission's office, Room 619, One Ashburton Place, Boston. By regulation, requests may be honored only if accompanied by proof of

Continued on page 2

## Christine M. Roach Joins the Ethics Commission

Christine M. Roach was appointed to the State Ethics Commission by Attorney General Thomas F. Reilly. Roach, a founding member of Roach & Carpenter, P.C., a Boston law firm concentrating its practice in litigation with an emphasis in business litigation, is a graduate of the University of Massachusetts at Amherst and Harvard Law School. Before founding Roach & Carpenter, Roach was an Assistant U.S. Attorney in the Civil Division.

Roach is one of five Ethics Commissioners who serve staggered five-year, non-renewable terms. Three Commissioners are appointed by the governor, including the chairman, one is appointed by the attorney general and one is appointed by the secretary of state. Only three of the five members, and only two of the governor's appointees may be of the same political party.

Continued on page 5

## Ethics Primer: Financial Interests in Contracts

*Periodically, the Bulletin will discuss a particular area of the conflict law. In this issue, the focus is on §20, which restricts "multiple contracts" for municipal employees, because this area of the conflict law may be difficult to understand and apply and has a great impact on municipal government. The information provided is educational in nature and should not be considered legal advice. Persons with questions about a specific situation should contact the Ethics Commission for free confidential advice.*

Section 20 of G.L. c. 268A, the conflict of interest law, generally prohibits a municipal employee (paid or unpaid, appointed or elected, full-time or part-time) from having a financial interest,

directly or indirectly, in a contract made by an agency of the municipality in which he serves. However, the section also provides numerous exemptions from this prohibition.

### Who must get an exemption?

There are three types of municipal employees who must qualify for an exemption.

First, any current municipal employee who wants to add another municipal position that is **appointed and compensated** must qualify for an exemption. Similarly, if the municipal employee wishes to have a financial interest in a

Continued on page 3

## Table of Contents

New Commissioner .....	1
It's filing time! .....	1
Primer: G.L. c. 268A, § 20 .....	1
Letter from the Executive Director ....	2
By the Numbers .....	2
Staff Changes .....	2
Ethics Primer (cont'd) .....	3
Recent Enforcement Matters .....	4
Educational Seminar Calendar .....	5
Section 6/6A Disclosures .....	5
Commission Services .....	6

## From the Executive Director

### "Ensuring the Public Trust"

*As the new Executive Director of the State Ethics Commission, I'd like to welcome you to the first edition of our redesigned 'Bulletin.' The Commission and I hope it contains information that helps you to understand and comply with the conflict and financial disclosure laws.*

*My past experience as General Counsel of the Office of Campaign and Political Finance and as a municipal official, convinces me that most public servants, indeed most people, try to do the right thing. To paraphrase one authority on the conflict law, the law does not assume public servants are untrustworthy, it recognizes that we are human.*

*The mission of the Ethics Commission is to help public servants at the state, municipal and county level put our duty to uphold the public's trust before our personal interests. The Ethics Commission does that by providing advice to public officials, conducting educational seminars around the state and receiving statements of financial interests or SFIs from about 5,000 elected officials and major policy making appointed officials..*

*Advice is confidential, timely, prospective and binding on the Commission and other law enforcement agencies. Educational seminars are free and available to you wherever you are in the state. Help is always available for those who must file SFIs.*

*Enforcement is also a necessary part of the Commission's role. Enforcement must, however, be timely, impartial and proportionate. In fact, most enforcement matters are resolved privately through confidential letters under the assumption that an explanation of the law is all that is needed.*

*Expect more changes in the next edition as the Ethics Commission and its staff strive to become more responsive to your concerns. And don't hesitate to send in suggestions, comments or questions for future Bulletins.*

*Peter Sturges*

## Commission Members Spring, 2001

Augustus F. Wagner, Jr., Chairman  
Stephen E. Moore  
R. Michael Cassidy  
Christine M. Roach

Carol Carson  
Editor

## The Commission by the Numbers

The Legislature appropriated \$1,503,429 for the Ethics Commission in FY00. This translates to a cost of approximately \$5.63 for each state, county and municipal employee under the Ethics Commission's jurisdiction and a cost of \$0.24 for each citizen of the Commonwealth of Massachusetts. The Commission does not retain revenue.

The five-member Commission met on 11 occasions in FY00. Additionally, Commissioners served as hearing officers on all cases adjudicated by the Commission.

The Legal Division handled 4,488 oral and written requests for confidential advice regarding the conflict of interest and financial disclosure laws, reviewed an additional 194 advisory opinions issued by municipal counsels, and prepared five formal Advisory Opinions approved by the Commission. There were 36 requests for advice pending at the end of FY00. The Division also represented the Commission before the Massachu-

setts Supreme Judicial Court on two matters, *Angelo M. Scaccia v. State Ethics Commission* and *Life Insurance Association of Massachusetts v. State Ethics Commission*.

During FY00, 4,774 elected officials, candidates and designated major policy-making public employees filed Statements of Financial Interests with the Commission.

A total of 6,695 people attended the 205 educational seminars conducted by the Public Education Division in FY00.

The Commission's Enforcement Division reviewed 803 complaints in FY00, issued 144 educational letters, conducted 92 initial investigations and recommended 52 cases for formal review by the Commission. The Commission approved 32 Disposition Agreements, totalling \$53,150 in fines, and issued two public enforcement letters. There was also one adjudicatory hearing, which resulted in a decision.

**VISIT OUR WEBSITE AT  
[WWW.STATE.MA.US/ETHICS](http://WWW.STATE.MA.US/ETHICS)**

## Staff Changes

Along with **Peter Sturges'** appointment as Executive Director, a number of other staff changes have taken place.

**Diane M. Meibaum**, formerly Deputy Chief of the Legal Division, was named General Counsel and Chief of the Legal Division. Her replacement as Deputy Chief is **David A. Wilson**, formerly Senior Litigation

Counsel of the Enforcement Division. Also joining the Legal Division is **John McDonald**.

In the Enforcement Division, David A. Wilson's move to the Legal Division resulted in **Karen Beth Gray** being named Senior Litigation Counsel and **Laurie E. Weisman** being named Senior Staff Counsel.

## Continued from page 1

a requesting individual's identity. A copy of the request will be forwarded to the individual whose statement has been examined.

As noted, most individuals file timely SFIs. Penalties are imposed, however, on persons who do not file

by the deadline:

1-10 days delinquent:	\$ 50
11-21 days delinquent:	\$100
21-30 days delinquent:	\$200
31 days or more:	\$500

Additional penalties are imposed on persons who do not file timely reports for more than one year.

# Ethics Primer: Financial Interest in a Contract

municipal contract that does not involve another municipal position, she must also qualify for an exemption.

Second, if a **prospective** municipal employee already has a financial interest in a contract with his municipality, he must qualify for an exemption when he begins to serve as a municipal employee.

Third, if a current **appointed and compensated** municipal employee wants to add an **unpaid** municipal position or an **elected** municipal position (whether paid or unpaid), she will need to qualify for an exemption. However, unlike the first two types of municipal employees described above, she needs to qualify for an exemption that will allow her to *continue* to be paid in her current municipal position while also serving in her appointed/unpaid or elected position.

## *Who does not need an exemption?*

Section 20 does not prohibit anyone from holding a number of unpaid positions. Section 20 does not prohibit anyone from holding more than one popularly elected position, even if one or more of those elected positions is paid.

## *Special Municipal Employees*

The Legislature created 'special municipal employee' status to allow municipalities to engage individuals who, otherwise, might not be able to serve because of their private activities in their municipalities or because they already are municipal, or special municipal, employees in another capacity in their municipality.

1. The mayor and members of the boards of aldermen, city council or selectmen in a town with a population over 10,000 persons may **not** be special municipal employees;

2. Selectmen in a town with a population of fewer than 10,000 persons are **automatically** special municipal employees;

For all other positions, the city council, board of aldermen, town council or board of selectmen may classify municipal positions as special if:

1. All employees who hold equivalent positions or serve on the same board

are designated special municipal employees; AND

2. the employees are unpaid; or are permitted personal and private employment during normal working hours; or do not earn compensation for more than 800 hours during the preceding 365 days.

Special municipal employee status **narrows, but does not eliminate**, the scope of the restrictions on a special municipal employee's conduct.

## *Exemptions*

The Legislature recognized that the needs of different municipalities may differ. The following exemptions allow a great deal of local control in order to allow municipalities to meet their individual needs.

1. A municipal employee who is **not** a special municipal employee may have a financial interest in a contract with his municipality if:

- the municipal employee is not employed by and does not participate in or have responsibility for the activities of the contracting agency or an agency which regulates the activities of that agency;
- if the contract is made after public notice or competitive bidding; and
- if the municipal employee files with the clerk a disclosure of his and/or his family's interest.

In addition, if the contract is for personal services, additional requirements must be met; a municipal employee seeking a contract for personal services should seek advice from the Ethics Commission

2. A special municipal employee may have a financial interest if she "does not participate in or have official responsibility for any of the activities of the contracting agency" **and** she files with the clerk of the city or town a disclosure of her interest and her immediate family's interest.

3. A special municipal employee who either participates in or has official responsibility for any of the activities of the contracting agency must not only file

the same disclosure as described in §20(c) but also obtain the approval of the "city council or board of aldermen, if there is no city council, board of selectmen or the district prudential committee" for an exemption.

As the general prohibition and the §20(b) exemption indicate, it is much more difficult for municipal employees to qualify for exemptions. However, there are specific exemptions for types of positions or financial interests that are available to **both** municipal and special municipal employees. These include:

- a municipal employee who receives benefits in connection with the rental, improvement, or rehabilitation of his residence;
- a municipal employee who adds a

part-time, call or volunteer job with police, fire, rescue or ambulance departments;

- a municipal employee who is eligible for a local

housing authority subsidy; and

- a municipal employee who owns housing in which tenants receive a local housing authority subsidy.

There are also exemptions for municipal employees to retain their municipal jobs and to also serve as elected selectmen and town or city councilors. Similarly, there is an exemption for an employee of a housing authority who is elected to an office other than mayor.

Finally, §20 does not prohibit an employee in a town having a population of less than three thousand five hundred persons from holding more than one **appointed** position with that town, provided that the board of selectmen approves the exemption of his interest from this section. This exemption does not allow an elected municipal official to be appointed to additional positions in which he would have a financial interest in a contract.

It's complicated! You can contact the Ethics Commission at 617-727-0060 for specific advice.

---

**Special municipal employee status allows municipalities to engage individuals who, otherwise, might not be able to serve.**

---

## Recent Enforcement Matters

*The Ethics Commission investigates hundreds of cases alleging violations of the conflict of interest and financial disclosure laws each year. While the Commission resolves most matters confidentially, it resolves certain cases publicly. Public enforcement letters, disposition agreements, and decisions and orders are matters of public record once a case is concluded.*

*A public enforcement letter (PEL) is issued where the Commission found reasonable cause to believe the law was violated but chose to resolve the case with a PEL because it believes the public interest would best be served by doing so. A PEL does not require the subject to admit violation of the law and is issued publicly by agreement of the subject.*

*A disposition agreement is a voluntary written agreement entered into between the subject of a case and the Ethics Commission in which the subject admits violating the law and generally agrees to pay a civil penalty.*

*The Ethics Commission does not comment on any matter under investigation, nor does the office confirm or deny that it has received a specific complaint. The identity of any complainant is kept confidential.*

### Disposition Agreements

**In the Matter of David Carignan** - The Ethics Commission fined Falmouth Health Agent David Carignan \$1,000 for violating the state's conflict of interest law. According to a Disposition Agreement, Carignan used his position as a health agent to cause a private corporation, Duco Associates, Inc. (Duco), to pay \$2,500, which it did not owe, to town-licensed septic system installer Carl F. Cavossa, Jr. In the Agreement, Carignan admitted that he violated §§23(b)(2) and 23(b)(3).

In 1996, Cavossa installed a septic system at a house under construction. The builder did not pay Cavossa. Duco took ownership of the house by foreclosure, then hired a different contractor to complete the house. In order to sell the completed house, Duco needed an occupancy certificate which required the Board of Health's sign-off.

Duco offered Cavossa \$500 for the as-built card. Cavossa refused, saying he wanted to be paid the entire amount owed to him by the original builder before he would provide the card. Carignan would only accept the as-built card from Cavossa.

Carignan did not inform Duco representatives of any alternative ways that

they could get approval of the as-built card. While Carignan did contact Cavossa, after Cavossa refused to turn over the card unless he was paid, he took no further action to obtain the as-built card from Cavossa. Carignan said to Duco's attorney words to the effect that it was unfair and immoral that Cavossa had not been paid for his work. Thus, Duco negotiated with Cavossa to provide the as-built card in return for \$2,500.

**In the Matters of David L. Phinney and Patrick J. Oser** - The Ethics Commission fined former Boston Public Facilities Department (BPF) construction specialist David L. Phinney and Boston building contractor Patrick J. Oser for violating the state's conflict of interest law. In his private capacity, Phinney was paid by Oser to prepare requisition forms for BPF approval in order for Oser to be paid; as a BPF inspector, Phinney approved those very same forms for payment. In addition, Phinney oversaw another developer's BPF contracts while doing private consulting work for that developer. Phinney has agreed to pay a \$13,500 fine: \$8,500 as a civil penalty for the violations and \$5,000 as a civil forfeiture of the money he received from Oser for privately preparing BPF requisitions. Oser has agreed to pay a \$3,500 fine.

In a Disposition Agreement, Phinney admitted that he violated §§17(a), 19 and 23(b)(3) of the conflict law by being paid by Oser to prepare forms privately which Phinney subsequently approved as a BPF em-

ployee. Phinney also admitted that he violated §23(b)(3) by doing private paid consulting work in communities other than Boston for Long and Gordon at a time when Phinney was Long & Gordon's contracts with the BPF.

In a second Disposition Agreement, Oser admitted he violated §17(b) by paying Phinney to help prepare Oser's payment requisitions to the BPF. Oser had contracts with the BPF to renovate buildings for resale to first-time home buyers; the requisitions authorized payment to Oser for the costs of the renovation.

### Public Enforcement Letters

**In the Matter of Edward J. Clancy** - The Ethics Commission ruled that State Senator Edward J. Clancy attempted to improperly influence the chairman and vice-chairman of the Board of Registration of Chiropractors through an *ex parte* communication in a pending adjudicatory proceeding.

In a Public Enforcement Letter the Commission found reasonable cause to believe Clancy violated §23(b)(2) of the state's conflict law, by meeting with two members of the board and speaking on behalf of a constituent, a chiropractor, who was then the subject of an adjudicatory proceeding before the board.

The PEL states that while service to constituents to resolve difficulties in dealing with state agencies is a legitimate activity of legislators, not every service to a constituent is lawful.

### SECTION BY SECTION: WHAT THE CONFLICT LAW, G.L. c. 268A, SAYS

- Section 17(a) prohibits a municipal employee from receiving compensation from anyone other than the city in connection with any matter in which the city has a direct and substantial interest.
- Section 17(b) prohibits anyone from giving compensation to a municipal employee in relation to any matter in which the city has a direct and substantial interest.
- Section 19 generally prohibits a municipal employee from officially participating in matters in which she has a financial interest.
- Section 23(b)(2) prohibits a public official from using her position to obtain for herself or others an unwarranted privilege of substantial value, one not properly available to similarly situated individuals.
- Section 23(b)(3) prohibits a public employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that anyone can improperly influence or unduly enjoy the state employee's favor in the performance of his official duties.

## Commission Educational Seminar Calendar

*The Ethics Commission provides free educational seminars for municipalities, agencies and public groups. The Public Education Division will go **anywhere** in the state, **anytime** day or night, to provide these seminars. Currently there are a number of openings; requests for seminars are honored on a first come, first served basis. Please call the Commission at 617-727-0060 if your municipality, agency or group would like to organize and sponsor a seminar.*

*The dates, times and locations of seminars listed below are subject to change. Please check with the municipality or the Ethics Commission if you plan to attend.*

### March

Day	Time	Host/Location
21	6:00 p.m.	City Solicitors and Town Counsel Association, Radisson Hotel, Boston
21	7:00 p.m.	Princeton Town Hall, 6 Town Hall Drive, Princeton
26	11:00 a.m.	Plymouth County Water Works Association, Stoneforge Restaurant, 90 Paramount Drive, Raynham
27	4:00 p.m.	Municipal Forum - Hampshire County (sponsored by Attorney General, District Attorney and the Ethics Commission)
28	7:00 p.m.	Pelham Town Hall, 351 Amherst Road, Pelham
29	6:30 p.m.	Martha's Vineyard Land and Water Commission, 33 New York Ave., Oak Bluffs

### April

Day	Time	Host/Location
3	6:30 p.m.	Public Employees Retirement Administration (PERAC) Commissioners, Plymouth Public Library, 132 South St. Plymouth
4	2:30 & 6:30 p.m.	Medford City Hall, 85 George A. Hassett Drive, Medford
5	10:00 a.m.	Massachusetts Municipal Association, Sheraton Tara Hotel, Framingham
10	4:00 p.m.	Municipal Forum - Franklin County (sponsored by Attorney General, District Attorney and the Ethics Commission)
10	7:00 p.m.	PERAC Commissioners, Main Library, 49 Lexington Street, Framingham
18	6:30 p.m.	Millville, Town Hall, 8 Central Street, Millville
19	7:00 p.m.	PERAC Commissioners, Inn at Northampton, One Atwood Drive, Northampton
23	8:00 a.m.	Northern Essex Community College, 45 Franklin Street, Lawrence
24	7:00 p.m.	PERAC Commissioners, 5 Middlesex Ave., 3rd Fl., Somerville
26	2:00 p.m.	PERAC Commissioners, 5 Middlesex Ave., 3rd Fl., Somerville

### May

Day	Time	Host/Location
15	7:00 p.m.	PERAC Commissioners, 5 Middlesex Ave., 3rd Fl., Somerville
16	7:00 p.m.	Marshfield Town Hall, 870 Moraine Street, Westwood
22	2:00 & 7:00 p.m.	Westwood Town Hall, 580 High Street, Westwood
23	1:30 & 7:00 p.m.	Sudbury Town Hall, 288 Old Sudbury Road, Sudbury

## 6/6A DISCLOSURES

*The conflict law requires state employees to make public disclosures if their job requires them to act in matters affecting the financial interests of immediate family members, business affiliations or themselves.*

*An appointed public servant who has made the proper disclosures may receive a determination from his or her appointing authority that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the commonwealth may expect from him or her. The determination allows the public official to*

*participate in that matter. Elected officials do not have an appointing authority and thus the disclosure and determination mechanism is not available to them and they may not participate in such matters.*

*Disclosures and determinations are public records which are available for inspection at the Ethics Commission's offices at One Ashburton Place, Room 619, Boston.*

*A public employee whose official responsibilities require participation in such matters should seek advice from the Ethics Commission.*

## Continued from page 1

Ms. Roach replaces Edward D. Rapacki of the Boston law firm Ellis & Rapacki. Mr. Rapacki served as a Commissioner from 1996-2000. The Commission and its staff thank Mr. Rapacki for his devoted service.

Currently, there is one vacancy on the Ethics Commission. To find out more about this vacancy, contact the Ethics Commission at 617-727-0060.

# Commission Services You Can Use

## GETTING LEGAL ADVICE

Anyone who is covered by the conflict of interest law may request **legal advice** about how the law applies to them in a particular situation. The advice is free, confidential, timely and prospective. To request such advice:

- Call the Commission's "lawyer-of-the-day" at 617-727-0060 or toll-free at 888-485-4766; or

- Send a letter, include all the relevant facts, to: Legal Division, State Ethics Commission, Room 619, One Ashburton Place, Boston, MA 02108.

If you need advice by a certain deadline, please include that information in your request.

## FILING COMPLAINTS

The Commission's Enforcement Division accepts **complaints** alleging violations of the conflict of interest and financial disclosure laws. Complainants' names are kept confidential. If you wish to file a complaint:

- Call the Ethics Commission's "investigator-of-the-day" at 617-727-0060; or toll free at 888-485-4766; or

- Write a letter, include all the relevant facts, address to: Enforcement Division, State Ethics Commission, Room 619, One Ashburton Place, Boston, MA 02108.

## HOSTING SEMINARS

The Commission offers free **educational seminars** about the conflict law to public servants. Seminars provide a basic understanding of the principles of the law and explain how to avoid potential conflicts.

Included in each seminar is a facilitated discussion based on hypothetical, yet realistic, situations. Topics covered include gratuities, nepotism, self-dealing, appearances, and restrictions on after-hours and post-employment activities.

To arrange for a seminar contact the Public Education Division at 617-727-0060 or toll-free at 888-485-4766.

Prsrt Std  
U.S. Postage PAID  
Boston, MA  
Permit No. 50604

State Ethics Commission  
One Ashburton Place, Room 619  
Boston, MA 02108-1501  
ADDRESS SERVICE REQUESTED